No. 49507-4-II

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COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II

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HAMILTON CORNER I, LLC,

Appellant,

v.

CITY OF NAPAVINE,

Respondent.

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# BRIEF OF RESPONDENT CITY OF NAPAVINE

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## GLOSSARY

**"AR"**
The Administrative Record of the City of Napavine in this Proceeding, Items 1-25 numbered LID2015000001-000179. Page numbers are abbreviated as follows, LID2015000001 is replaced with "AR 1," etc.

**"City"**
Respondent City of Napavine, Lewis County, Washington.

**"Council" or "City Council"**
The City Council of the City of Napavine, Lewis County, Washington.

**"CP"**
Clerk's Papers numbered 1-240.

**"Hamilton Br."**
Hamilton Corner's Opening Brief

**"Hamilton Corner"**
Appellant Hamilton Corner I, LLC.

**"LID"**
Local improvement district.

**"LID 2011-1"**
Local Improvement District No. 2011-1, City of Napavine, Lewis County, Washington.

**"LID Improvements" or "LID 2011-1 Improvements"**
The improvements included within the Rush Road Water System Improvement Project and LID 2011-1.

## 1. INTRODUCTION

This is a routine local improvement district (LID) for a new, public water system where none previously existed. The water transmission and fire suppression improvements for that new system are the same today as identified at LID formation (2012) and final assessment (2015). Appellate review of the final assessments related to these improvements is limited to the record before the City Council. That record establishes the Council's finding of special benefit. It also shows the Council's final assessments on the Hamilton Corner I, LLC properties did not exceed that special benefit.

Overcomplicating this appeal, Hamilton Corner submits seven assignments of error and fourteen associated issues similar to other "kitchen sink" LID special assessment appeals recently before this Court.[1] The Washington Legislature, however, abrogated judicial assessment review on the merits. Only one step in the LID special assessment process is relevant to this appeal: whether the record before the Napavine City Council supports the Council's assessment decision under the deferential "fundamentally wrong basis" and "arbitrary and capricious" review standards. It does.

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[1] *See, e.g., Duncan v. City of Edgewood*, No. 48028-0-II, 2016 WL 6441388 (Wn. App., Div. II, Nov. 1, 2016) (unpublished and nonbinding); GR 14.1.

Hamilton Corner's fixation on Well 6 is fundamentally misplaced. The water system improvements funded by LID 2011-1 currently serve the Hamilton Corner properties with clean, clear municipal water. LID 2011-1 did not fund the water rights acquisition or the drilling of Well 6. And, even if the decision to include certain Well 6 improvements in the LID was at issue (it is not), Well 6 provides for fire suppression flows and remains available as a source of municipal water. The properties are specially benefitted.

Hamilton Corner also misreads the Lewis County Superior Court's memorandum decision below and its import. The policy issue of which improvements should or should not have been included in the LID is irrelevant to the assessment decision. The Superior Court, moreover, did not bar Hamilton Corner from protesting final assessment because it failed to protest formation. The Court heard the entirety of Hamilton Corner's argument against assessment.

Hamilton Corner's $170,329 in assessments is less than 5% of its properties' appraised value, approximately $3,700,000. Ultimately, this proceeding is about an owner of large, commercial properties at an I-5 interchange paying its fair share of LID costs for water improvements that substantially increase its properties' values. The City respectfully requests this Court affirm the assessments and dismiss this appeal.

## 2. RESPONSE TO ASSIGNMENTS OF ERROR/ISSUES

The Napavine City Council, sitting as a board of equalization under Chapter 35.44 RCW, did not err in confirming the LID 2011-1 assessment roll, and the Superior Court sitting in its appellate capacity did not err in affirming the City Council. The City of Napavine restates the relevant[2] assignments of error asserted by Hamilton Corner and the issues relating to those assignments as follows:

2.1 "Fundamentally Wrong Basis" Standard of Review. Under the "fundamentally wrong basis" standard of review, courts affirm LID special assessments that do not suffer from fundamental flaws necessitating nullification of the entire LID. The special assessments for LID 2011-1 are supported by an expert appraisal report and the testimony of a certified appraiser. They are attacked without alternative valuation testimony by Hamilton Corner's unqualified criticisms. Should this Court affirm the LID 2011-1 assessments under the deferential "fundamentally wrong basis" standard of review? (*Hamilton Corner's Assignment of Error 2.1 and Issue 3.1.*)

2.2 "Arbitrary and Capricious" Standard of Review. Under the "arbitrary and capricious" standard of review, courts affirm city council decisions that consider the facts and circumstances surrounding a special assessment even if they might believe that decision is "erroneous." The Napavine City Council considered the facts and circumstances presented by all parties, including the City (expert appraisal report and engineering testimony) and Hamilton Corner (two-page protest and no alternative valuation testimony). Should this Court affirm the Council's decision under the deferential "arbitrary and capricious" standard of review? (*Hamilton Corner's Assignment of Error 2.2 and Issue 3.2.*)

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[2] The remaining Assignments of Error 2.3-2.7 (Issues 3.3-3.7) concern Hamilton Corner's misreading of the Superior Court decision, irrelevant facts regarding the City's water system, and unfounded attacks on the City's expert appraisal report. These arguments are addressed under the appropriate standards of review below. As directed by the LID statutes, this Court reviews the record before the Council and applies the same standards to the Council's decision as did the Superior Court.

## 3. RESTATEMENT OF THE CASE

### 3.1 Local improvement districts finance improvements that specially benefit individual properties.

"Special assessments to pay for local public improvements benefiting specific land are of ancient lineage." *Heavens v. King Cty. Rural Library Dist.*, 66 Wn.2d 558, 563, 404 P.2d 453 (1965).[3]

Cities often construct capital improvements that, in addition to benefiting the community as a whole, specially benefit individual properties (i.e., increase their fair market value). Cities use legislatively-authorized financing tools called "local improvement districts" to assist property owners in paying for some or all of the improvement costs that provide special benefits. Owners pay back the LID by prepaying the entire special assessment or by paying installments over a period of years on LID financing debt (e.g., bonds) issued for the remaining assessments. RCW 35.49.040.

Generally, as here, LIDs finance the cost of *acquiring* public improvements that benefit private property. And generally, as here, LIDs do not finance the cost of *operation and maintenance* of those

[3] Assessments are not property taxes. Property taxes are enforced against all classes of property on an *ad valorem* basis, while assessments are restricted to real property within a given district and are based entirely upon the theory of special benefit. *McMillan v. City of Tacoma*, 26 Wash. 358, 362, 67 P. 68 (1901). As a result, special assessments for local improvements are not deemed taxes within the uniformity provisions of WASH. CONST. art. VII, §9. *Berglund v. City of Tacoma*, 70 Wn.2d 475, 477, 423 P.2d 922 (1967); *City of Seattle v. Rogers Clothing for Men, Inc.*, 114 Wn.2d 213, 232, 787 P.2d 39 (1990).

improvements. *Cf.* RCW 35.43.040(8), (11) (specific operation and maintenance authority inapplicable to the LID 2011-1 water system improvements). Discussion of ongoing maintenance and operation costs in this appeal is irrelevant.

### 3.2 City of Napavine LID 2011-1 is a routine water system improvement LID.

The City operates an existing City-wide water system. *See* AR 6-7 (Finding 3.1). The new Rush Road Water System Improvement Project is an addition to the City water system to serve the area around the Rush Road/Interstate-5 intersection (Exit 72), which was not previously served by the City system. *Id.* The LID 2011-1 Rush Road area includes many commercial uses, including for example, a Burger King restaurant, a Subway restaurant and a Shell fuel station/convenience store on the Hamilton Corner properties.

The LID project area receives City water that "meets all public health requirements as well as the City's own stricter standards" from the LID Improvement's new pumps, pipes and fire hydrants. *Id.* The new public water system from LID 2011-1 therefore allows properties included in the LID to achieve their highest and best use consistent with City of Napavine development regulations. AR 7.

### 3.3 The LID water system improvements benefit the Rush Road properties.

The LID Improvements include the following water system elements:

> Acquisition of a 12-inch water main, pressure reducing stations and fire hydrants, on Rush Road from Cedar Crest Street north to the Interstate 5 freeway interchange, and north on Hamilton Road to a point approximately 2,400 feet beyond the Interstate 5 freeway interchange; construction of additional 12-inch and 8-inch water main along Rush Road across the Interstate 5 freeway interchange, construction of 8-inch water main north on Rush Road from the Interstate 5 interchange approximately 1,500 feet, and south from the Interstate 5 interchange along Kirkland Road and Bond Road approximately 1,800 feet; additional fire hydrants per City of Napavine standards on aforementioned additional water mains; water services for properties to be served by these water mains; equipping a recently drilled City well with a pump, power, controls, and piping to connect well to aforementioned water mains; and construction of a new water reservoir for pressure control for the zone to be served by aforementioned water mains, including piping from the new water reservoir to aforementioned water mains; and associated work and appurtenances related to the above-described improvements.

AR 96. These LID Improvements not only provide public water meeting or exceeding the standards of the Safe Drinking Water Act, but also provide fire flow to support standards for commercial development. Contrary to Hamilton Corner's assertions, the LID Improvements did not include the cost of acquiring water rights for and drilling Well 6, but only

the costs for "**equipping** a recently drilled City well." *Id.* (emphasis added); AR 154-55 (well and water rights not included in LID costs).

Further, Hamilton Corner interjects an issue that has no relevance to these proceedings—the *current* color of Well 6 water. The unrebutted testimony is that the City will not use Well 6 water "until the color issue is resolved." AR 84, 154. This is the City's public policy choice. It is not based on any facts regarding alleged unsuitability for use. The water meets all standards. It is drinkable. The fact that the City may use water from other parts of its unified utility system on an interim basis does not diminish the fact that clean, clear municipal water flows through the LID Improvements to the Hamilton Corner properties. The LID did not, and is not, paying for water, only the water delivery system. AR 154-55.

### 3.4 Only 50% of LID 2011-1 costs are assessed to the benefitted properties.

The City engaged in extensive efforts to minimize assessments against benefitted properties in the LID. The City had authority to charge up to 100% of the total project costs[4] to the benefitted properties. *See In re Aurora Ave.*, 180 Wash. 523, 529, 41 P.2d 143 (1935). It chose not to.

[4] Costs of the LID 2011-1 Project Improvements included (as authorized by RCW 35.44.020) the LID feasibility study and formation costs; design costs; environmental and archaeological studies; legal fees; loan administration costs; construction management fees; City LID administration costs; and appraisal fees. AR 11.

The City submitted an application to the Washington State Department of Commerce in June 2009 for a grant and loan to support the Rush Road project and defray assessments to property owners. That contract was approved and executed in April 2011. The result not only cut assessments in half, but also lowered the interest rate on the financing to support the balance of LID Improvement costs. Of the total LID 2011-1 water system cost ($2,832,000), only half ($1,416,000) is charged to the properties served by the system through LID assessments.[5]

### 3.5 Hamilton Corner has had ample opportunity to seek its own valuation testimony.

For three and a half years, Hamilton Corner had been on notice regarding the preliminary assessments. Preliminary assessments were mailed to property owners in February 2012 (AR 4), were on file at the City and available to the public (AR 94), and are reflected in the Administrative Record before the Council (AR 13). The final assessment is only slightly more than the preliminary assessment amount. *See infra* Section 3.7.

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[5] AR 2. The final project cost was $2,832,000. AR 11. That cost included $1,570,225.09 for construction ($1,370,111.63 paid to contractors for construction; $106,868.72 paid in State sales tax and $93,244.74 paid for construction management, inspection and administration). AR 7 (Finding 3.2). The City financed the entire $2,832,000 with the Department of Commerce loan, which included a 50% forgivable principal. The balance of $1,416,000 is proportionally allocated against the benefitted properties by the LID assessments.

### 3.6 The City Council held extensive hearings on protests.

The LID 2011-1 final assessment roll hearing commenced on October 27, 2015. AR 118. The City Council heard testimony from all parcels that sought to protest an assessment. *Id.* The Council continued the hearing to November 24, 2015. AR 121. The LID sent written responses on November 19, 2015, to the protests previously filed. AR 6 (Finding 2.1).

The Council heard further testimony at the continuation hearing on November 24, 2015, including from protesting property owners and the LID. AR 122-23. All testimony was under oath at the October 25 and November 24 hearings. The Council considered the roll and the special benefits to be received by each parcel in the LID, including the increase in fair market value of each parcel of land by reason of the LID Improvements. AR 6 (Finding 2.3). The Council ruled on the protests and confirmed the final assessment roll on December 8, 2015. AR 1-9 (Ordinance No. 549).

### 3.7 Hamilton Corner's protest submissions to the City Council were minimal.

Hamilton Corner's protest contains only a few sentences asserting complaints against the City's appraisal report. AR 74. The majority of

the letter complains about the Rush Road project budget and the clarity of Well 6 water. *Id.*

The preliminary estimated assessments on Hamilton Corner's three parcels of $152,000 (noticed February 2012) increased by less than 12% to the final assessed amount of $170,329.02 (noticed September 2015). The change in assessments for Hamilton Corner's three properties are as follows:

| Parcel | Preliminary Assessment (2/8/12) | Final Assessment (12/17/15) |
|---|---|---|
| LID lot #1 (017873002000) | $4,436.04 | $4,951.78 |
| LID lot #2 (017875004000) | $131,794.87 | $147,117.56 |
| LID lot #3 (017905001000) | $16,357.88 | $18,259.68 |
| Total | $152,588.79 | $170,329.02 |

AR 13.

At the hearing on November 24, 2015, appraiser Darin Shedd, MAI, testified regarding the special benefit of the LID Improvements to Hamilton Corner's properties (at least $360,000). *See* AR 173-176. Mr. Shedd testified in support of his firm's special benefit findings, including reference to land values at I-5 interchanges and in particular in the LID area. AR at 175. Hamilton Corner did not present a qualified appraisal or any other valuation evidence, opinion, or testimony to counter either the facts or opinions from the appraiser's report (AR 15-71) or the

expert testimony. Hamilton Corner did not present competing before-and-after valuation analysis of the properties with the new water system.

Instead, Hamilton Corner primarily objected to the City's decision to move forward with the improvements included in LID 2011-1. *See, e.g.*, AR 74-75, 145-49. City Council made that legislative decision at LID formation, and Hamilton Corner chose not to protest formation. RCW 35.43.100 ("No lawsuit whatsoever may be maintained..." unless LID formation is timely challenged within the applicable 30 day period.).

### 3.8 After considering all evidence presented, the Council ordered the final assessments upon the record before it.

The Legislature recognizes that cities need not recite legal conclusions, negative facts, or even specific findings of fact already included in an administrative record when reviewing evidence presented in an LID proceeding. For example, a city may use any method or combination of methods of assessment; a city does not need to recite the method of assessment that it will use. RCW 35.44.047.[6] For over 100

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[6] The traditional method of apportioning special benefits throughout a local improvement district had been the "zone-and-termini" method. *See* RCW 35.44.030; *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 413-14, 851 P.2d 662 (1993). But, a city is free to use any method that will, in its opinion, more accurately estimate the special benefits the properties within the local improvement district will receive. RCW 35.44.047 states:

> Notwithstanding the methods of assessment provided in RCW 35.44.030, 35.44.040 and 35.44.045, the city or town may use any other method or combination of methods to compute assessments which may be deemed to more fairly reflect the special benefits to the properties being assessed. The failure of the council to specifically

years, the Washington Supreme Court has rejected the notion that the authority charged with determining special benefit must somehow document its findings:

> **The commissioners are chargeable with the result of their work, and not with the manner by which they arrive at that result**. If the return itself does not show that the premises of the objector are assessed more than they are benefited, and more than their proportionate share of the cost of the improvement, the objector is not injured, and hence **it is of no moment to him what process the commissioners employed in order to arrive at the result** reached by them."

*In re City of Seattle*, 47 Wash. 42, 44, 91 P. 548, 549 (1907) (emphasis added).

In the LID formation ordinance, the City specifically recited it "may use any other method or combination of methods to compute assessments which may be deemed to more fairly reflect the special benefits to the properties being assessed than the statutory method of assessing the properties." AR 93 (Ordinance 497, Section 5). Here, the City employed a per acre basis for the LID 2011-1 assessments. AR 12, 136-37. For proportional assessment purposes, the assessed amount of $1,416,000 (50% of LID costs) was divided by the 310.98 buildable acres within the LID. Commercial property was uniformly assessed at

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recite in its ordinance ordering the improvement and creating the local improvement district that it will not use the zone and termini method of assessment shall not invalidate the use of any other method or methods of assessment.

$5,158.10 per buildable acre. Residential property was uniformly assessed at $4,364.84 per buildable acre. *Id.*

Just like many court orders, city council special assessment orders need not recite or explain every fact in the record.[7] The LID statutes do not require city councils to provide exhaustive findings and conclusions. Nevertheless, the Napavine City Council entered extensive findings and specifically addressed each protest, including the Hamilton Corner protest. AR 4-9. Of the 54 parcels of real estate subject to assessment, only the three parcels owned by Hamilton Corner appealed the final assessment through the Superior Court.

### 3.9 The Superior Court limited its review to the Administrative Record before the City Council.

"Review ... is limited to the record of proceedings before the municipality." *Abbenhaus v. City of Yakima*, 89 Wn.2d 855, 859, 576 P.2d 888 (1978). The Lewis County Superior Court properly based its decision and final judgment on the record before the City Council, providing the foundation for its holding as follows:

> After a review of **the extensive proceedings at the City** and equally extensive oral argument, it is apparent that the City did not act in an arbitrary and capricious manner.... Nor were the methods used by [the City] fundamentally flawed.

[7] *See, e.g., Clausing v. DeHart*, 83 Wn.2d 70, 75, 515 P.2d 982 (1973) ("Negative findings of fact are not required.").

CP 237 (Decision at 1:23-26) (emphasis added). The Administrative Record before the City Council consisted of AR 1-179. The Superior Court noted the only relevant protest records were the materials and testimony Hamilton Corner presented to the Council:

> "[Hamilton Corner] did not request a continuance of these [assessment] hearings at any time. Nor did he present any evidence in support of his claims. The City Council (Council) ruled on the protests and affirmed….

CP 238 (Decision at 2:7-9). Hamilton Corner's written protest is contained in the Administrative Record at AR 74-76.

Hamilton Corner did submit extraneous materials to the Superior Court in two "supplements" that were not before the City Council at the LID hearings. *See* CP 14-20. Although Hamilton Corner denominated these materials so as to appear part of the official record, numbering them "LID2015000180-000659," this Court should not be confused. These materials were not before the City Council, are not part of the Administrative Record, and are not subject to appellate review. *Abbenhaus*, 89 Wn.2d at 859. Had Hamilton Corner presented these materials to the City Council, the Council would have entered them into the record and considered them at the assessment hearing. Hamilton Corner did not do so. *See* AR 74-76 (3-page protest filed with City).

The Superior Court did allow Hamilton Corner's extraneous materials into the appellate proceedings before the Superior Court. Theoretically, this risked an improper expansion of the Superior Court's appellate jurisdiction. Under RCW 35.44.250, the scope of judicial review:

> "...requires complaining parties to place all relevant information and objections before the proper decision-making body, the council prior to the municipality's decision, instead of permitting later attack in the superior court based upon information which the municipality did not have the opportunity to consider."

*Abbenhaus*, 89 Wn.2d at 860. The City Council, sitting as the board of equalization, did not have these extraneous materials before it, as required by law. As a result, they should not be considered.

Nevertheless, and as discussed above, the Superior Court apparently did not base its decision on Hamilton Corner's extraneous materials. This Court should similarly disregard Hamilton Corner's extraneous materials.

## 4. ARGUMENT

### 4.1 Summary of argument.

The City of Napavine formed LID 2011-1 and assessed properties, correctly following all statutory procedures and constitutional due process. The LID's assessment against the Hamilton Corner properties is supported

by both an expert appraisal report and the qualified opinion testimony from a designated Member Appraisal Institute (MAI) appraiser. The LID Improvements now supply clean municipal drinking water and fire flow to support the growing commercial Rush Road area within the City.

In contrast, Hamilton Corner challenged the assessments without alternative valuation evidence, expert opinion, or other persuasive testimony. Under RCW 35.44.110, any ground for objection that was not submitted at or before the City Council's hearings on final assessments "shall be conclusively presumed to have been waived."

Based on the record, the City Council found in its Findings of Fact and Conclusions of Law that the assessments are supported by substantial evidence. Under the deferential "fundamentally wrong basis" and "arbitrary and capricious" review standards, this Court should affirm the Council's special assessment order.

### 4.2 The statutory standards of review are "fundamentally wrong basis" and "arbitrary and capricious."

The City Council, sitting as a board of equalization, is the trier of fact in an LID assessment proceeding. RCW 35.44.100. Restoring century-old precedent, the Washington Legislature expressly abrogated *de novo* review of the administrative record before city councils nearly 60 years ago. Laws of 1957, ch. 143, § 7; *see Abbenhaus*, 89 Wn.2d

at 858 (recognizing legislative abrogation of *de novo* review and *In re Schmitz*, 44 Wn.2d 429, 268 P.2d 436 (1954)). Accordingly, this appeal is not a review of the *weight of the record* before the Council. This appeal is instead a review of the City Council's assessment *decision*.

The City Council's assessment decision is reviewed under the deferential "fundamentally wrong basis" and "arbitrary and capricious" review standards mandated by the Legislature:

> The judgment of the court **shall confirm**, unless the court shall find from the evidence that such assessment is founded upon a **fundamentally wrong basis** and/or the decision of the council or other legislative body thereon was **arbitrary or capricious**; in which event the judgment of the court shall correct, change, modify, or annul the assessment insofar as it affects the property of the appellant.

RCW 35.44.250.

"Review under the statutory standards should not be an independent consideration of the merits of the issue but rather a consideration and evaluation of the decision-making process." *Abbenhaus*, 89 Wn.2d at 859-60; *accord*, *Bellevue Assoc. v. City of Bellevue*, 108 Wn.2d 671, 676-77, 741 P.2d 993 (1987); *Hansen v. Local Imp. Dist. No. 335*, 54 Wn. App. 257, 262, 773 P.2d 436 (1989). Under RCW 35.44.110:

> All objections to the confirmation of the assessment roll shall state clearly the grounds of objections. Objections not

> made within the time and in the manner prescribed in this chapter shall be conclusively presumed to have been waived.

Thus, the scope of review "is limited to the record of the proceedings before the municipality." *Abbenhaus*, 89 Wn.2d at 859.[8]

"A city need only show 'slight evidence,' if any" to establish that its appraisal method reflects special benefit. *Hasit LLC v. City of Edgewood*, 179 Wn. App. 917, 944, 320 P.3d 163 (2014). Merely rebutting a presumption of special benefit will not defeat a special assessment. "Even if the presumption of an assessment's validity is successfully rebutted … the objector must still show that the assessment was founded on a fundamentally wrong basis or was imposed arbitrarily or capriciously." *Kusky v. City of Goldendale*, 85 Wn. App. 493, 500, 933 P.2d 430 (1997) (*citing Abbenhaus*, 89 Wn.2d at 860-61).

### 4.3 The City Council's assessment decision may be affirmed on any grounds.

The Superior Court reviews the Council's assessment decision in its appellate capacity. RCW 35.44.250. The Court of Appeals reviews the Superior Court's appellate decision by applying the same "fundamentally wrong basis" and "arbitrary and capricious" review standards directly to the Council's decision. *See* RCW 35.44.270 (on remand to the City

[8] *Cf.* RAP 2.5(a). "While an appellate court retains the discretion to consider an issue raised for the first time on appeal, such discretion is rarely exercised." *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App. 52, 81, 322 P.3d 6 (2014).

Council, the Court of Appeals order replaces the Superior Court decision); *see also* RCW 35.44.260 ("Appellate review of the judgment of the superior court may be obtained as in other cases....").

This Court may therefore affirm the City Council's assessment decision on any grounds supported by the Administrative Record. *Sunde v. Tollett*, 2 Wn. App. 640, 643, 469 P.2d 212 (1970) ("A correct decision will be affirmed on any ground within the proof."). Any alleged defects in the Superior Court's appellate decision are immaterial to this Court's review of the City Council's assessment decision.

Notwithstanding this appellate posture, Hamilton Corner misreads the Superior Court's decision below. The Superior Court did not bar Hamilton Corner's assessment appeal because it failed to appeal LID formation. Instead, the Court held, to the extent it objects to the inclusion of certain water system improvements within the LID, Hamilton Corner should have brought a formation protest against that legislative decision under RCW 35.43.100 or .180.

The Administrative Record shows the Superior Court was correct. Hamilton Corner's submissions before the Council focus on its disagreement with the City's legislative and policymaking decision to extend its public water system to the I-5 Exit 72 commercial area; its business decision to accept certain bids to construct the improvements; its

overall operation and maintenance decisions regarding its municipal water system; and, its exercise of valid police powers to require municipal water service. AR 74-75, 145-49. Although vague reference is made to the absence of special benefit, Hamilton Corner did not, and never has, provided any alternative valuation evidence or testimony relevant to the Council's finding of special benefit or its assessment decision.

### 4.4 The assessment methodology passes "fundamentally wrong basis" review because the LID's special assessment method was fundamentally sound.

"Fundamentally wrong basis" refers to "some error in the method of assessment or in the procedures used by the municipality, the nature of which is so fundamental as to necessitate a nullification of the entire LID, as opposed to a modification of the assessment as to particular property." *Abbenhaus*, 89 Wn.2d at 859 (internal quotation marks omitted). Review for fundamental errors is limited to the record before the City Council:

> Fundamental errors should be ascertained as a matter of law by reference to the transcript which plaintiff is required to certify. RCW 35.44.230. That record should demonstrate, without reference to extrinsic evidence, whether the statutes and ordinances or charters have been followed by the municipality.

*Cammack v. City of Port Angeles*, 15 Wn. App. 188, 196–97, 548 P.2d 571 (1976)

In LID proceedings, it is the Council, as the finder of fact, that weighs the competing evidence (if any) of special benefit provided by the LID improvements. Here, the Napavine City Council found and concluded, based on the evidence before it, the following special benefits provided by the LID 2011-1 Improvements:

> The City operates a public water system. The Improvements provide an addition to that water system in an area of the City not previously served by a public water system. The system's delivered water meets all public health requirements as well as the City's own stricter requirements. The properties within the LID receive special benefit from the LID Improvements. Without public water, the properties cannot achieve development to the highest and best use consistent with City development regulations. Consistent with state law, the City is the exclusive provider of water to those areas served by the City.

AR 6 (Finding 3). The Council, although not required to do so, made specific findings as to the special benefit conferred by the LID Improvements on the Hamilton Corner properties, as determined by the LID's expert appraisal report:

> A Benefit Study/Appraisal Report was prepared for this property in accordance with standard practices. The Board heard testimony from a qualified, independent appraiser with expertise in special benefit assessments. The Board finds this method appropriate under the circumstances and the evidence supporting the employment of this method sufficient. The fair market value of the properties benefited by LID No. 2011-1 has been increased in an amount equal to or greater than the assessments.

AR 8 (Finding 3.7). For its part, Hamilton Corner presented, as the only bases for its claims, unqualified criticism of the LID's engineering testimony and expert appraisal report. *See, e.g.*, AR 74-75.

The totality of these proceedings confirms the finding of special benefit and the special assessment methodology were fundamentally sound.

#### 4.4.1 The entirety of the LID Improvements specially benefit the Hamilton Corner properties.

Because water from Well 6 currently is not being used for drinking purposes, Hamilton Corner seems to assume that the LID 2011-1 Improvements *in their entirety* do not specially benefit the property at all. This is factually incorrect. The LID's transmission, storage, and other water facilities currently serve the Hamilton Corner properties with clean, clear water:

> As far as Mike Hamilton's comments, the city is not going to provide any water from Well No. 6 until it is—the color issue is resolved. So we have a pressure reducing valve set up with the higher pressure zone that allows water now out to all the businesses in the Rush Road interchange….

AR 154-55 (Hinton testimony). The delivery of clean, clear municipal water to the Rush Road area—the fundamental purpose of the LID

Improvements and its foundation for special benefit and assessment—was accomplished and continues today. AR 154.[9]

The uncontroverted testimony by certified appraiser Darin Shedd before the City Council establishes that this delivery of municipal water flow specially benefits the Hamilton Properties:

> [T]his is essentially an undevelopable piece of property unless you bring city water to this property. The code doesn't allow new wells, it doesn't allow subdivision, and it doesn't allow new development. So absent bringing water into this—water to this property, either the developer or in this case with a LID, the property is stunted and economically—it's economically stunted. There's no doubt in my mind that the benefit is—it's at least [$320,000] if not more.

AR 173-74 (Shedd testimony). Mr. Shedd's testimony is supported by the appraisal report. Before and after valuation under a sales comparison approach confirm sufficient special benefit ($320,000) to support the LID's assessments ($170,000). AR 50-59. Further, considering the availability of development made possible by LID improvements is an appropriate special benefit consideration. *Hasit*, 179 Wn. App. at 942.

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[9] Hamilton Corner's allegation that the City has fundamentally changed the LID by delaying the use of Well 6 water for domestic drinking purposes lacks foundation. Hamilton Br. at 28. LID 2011-1 began as a water system improvement for properties within the LID and remains a water system improvement for properties within the LID. The unpublished decision *Fury v. City of North Bend* is therefore distinguishable. There, the city expanded the LID *after formation* to include other properties and, to accommodate the expansion, changed the scope of the LID improvements (vacuum to gravity sewer system) at a 63% increase in costs. *Fury*, 177 Wn. App. 1015 (2013) (unpublished and nonbinding). Here, LID 2011-1 has not changed in size, scope or cost.

That appraisal report was authored consistent with generally accepted appraisal practices. *See, e.g.*, AR 30-33. Hamilton Corner does not cite any authority requiring an appraiser to confer with a property owner prior to submitting a valid appraisal report. Such a requirement would allow a property owner to defeat any independent appraisal by choosing to remain silent. This fact and the absence of any legal authority requires the Court to reject Hamilton Corner's "didn't talk to me" objection. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P. 2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.").

If Hamilton Corner had alternative valuation information that the appraiser should have considered, Hamilton Corner could have presented it to the City Council at or before the assessment hearing. It did not do so. The only evidence in the Administrative Record is the City's finding, supported by the expert appraisal report, that the properties are specially benefitted in excess of the assessment.

#### 4.4.2 The LID Improvements benefit properties within the LID; they were not designed to benefit properties outside the LID.

Because none of the LID 2011-1 Improvements are designed to benefit properties outside of the LID, *Hasit v. City of Edgewood* is

distinguishable. There, a city assessed 100% of the cost of improvements to property owners, including for portions specifically designed to serve properties outside of the LID. *Hasit*, 179 Wn. App. at 941. Here, property owners are paying only 50% of the LID 2011-1 Improvements' costs. *See supra* Section 3.4. And under the uncontroverted evidence submitted to the City Council, all of the LID Improvements are designed to, and do, specially benefit the LID properties. AR 8 (Conclusion 4.2).

The fact that there could be general benefit to the City as a whole is irrelevant. "Nearly every conceivable improvement that confers special benefits on nearby properties also confers some present or future benefit to the community in general." *Hasit*, 179 Wn. App. at 937; *see also In re Aurora Ave.*, 180 Wash. at 529 (affirming 100% cost allocation to LID properties for Aurora Avenue (SR 99) Bridge in Seattle, notwithstanding presence of pass-through traffic and general city benefit).

Far from the problem in *Hasit* of oversizing sewers for properties outside the LID, there is no evidence here of any benefit to properties outside LID 2011-1. The LID 2011-1 properties (all around I-5 Exit 72) are the only incorporated City areas in the vicinity. *See* AR 14.

### 4.4.3 The LID may assess properties for Well 6 improvements prior to their full implementation.

The estimated costs of the LID 2011-1 Improvements directly related to Well 6 (*i.e.*, pump and piping for the Well, but not drilling or water rights acquisition, AR 96) comprise just 9.2% of the total LID ($260,000 out of $2,832,000, AR 7, 114).

While the City may not have *yet* placed Well 6 into full domestic service for drinking water purposes, water from Well 6 is available for fire suppression purposes.[10] The LID Improvements connecting Well 6 are therefore currently in use today and support a finding of special benefit. The City may therefore specially assess Hamilton Corner for LID Improvements that connect Well 6 to the system even though Well 6 water is yet to be used for drinking purposes.

Notwithstanding the current special benefit provided by connecting Well 6 to the City water system, the City could always have ordered assessments against improvements that were not yet completed: "cities may assess such costs before completion of the improvement." *Little Deli Marts, Inc. v. City of Kent*, 108 Wn. App. 1, 8, 32 P.3d 286 (2001).[11]

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[10] To the extent relevant, Hamilton Corner has admitted fire flow service through its supplemental materials, denominated at AR 186-87.

[11] Even if the Court were to consider the schedule for full implementation of Well 6 (which it need not do), the Court may take judicial notice that the City has approved an ozone treatment proposal to address water coloration for full use of the Well, with costs funded outside of LID financing. *See* Meeting Minutes, Napavine City Council (August 23, 2016), *available at* http://cityofnapavine.com/images/8-23-16_MinutesAppr.pdf.

#### 4.4.4 The expert appraisal report did not rely on speculative uses and is fundamentally sound.

Hamilton Corner claims the appraisal report relies on a speculative "immediately occupied" new development to support its after-LID valuation. Hamilton Br. at 35. No such reliance can be found in the appraisal report. Rather, value is derived in that "excess land is **available** for immediate development." AR 57 (emphasis added). As discussed above, the LID allows substantially more of the area in the Hamilton Corner properties to be developed. Comparable property sales indicate that a willing buyer will pay more for such properties. AR 50-59. This is an actual, not speculative, increase in fair market value that supports a finding of special benefit.

Further, the appraisal report did not improperly combine properties to create a speculative "superblock" valuation. In *Doolittle v. City of Everett*, the Supreme Court held an appraisal may consider future use with respect to individual parcels (and combined parcels under a three-part "unity" test), but may not combine discrete, separately-used parcels in order to achieve a greater or more intense potential future use. *Doolittle*, 114 Wn.2d 88, 104, 786 P.2d 253 (1990).

Here, the expert appraisal report did not consider future expanded use, let alone combine parcels to improperly do so: "... the highest and

best use of the subject in the 'after' condition is the continued use of the existing improvements for the foreseeable future, with the excess land of 19.43 acres suitable for additional commercial and industrial development." AR 57. Further similar development, which is now made possible by the LID 2011-1 Improvements, is an appropriate consideration for an increase in fair market value. *See Hasit*, 179 Wn. App. at 942. And, "[p]roperty cannot be relieved from the burden of a local improvement district assessment simply because the owner devotes it to a use which may not be specially benefitted by the local improvement." *Doolittle*, 114 Wn.2d at 93. The expanded development made possible by the LID Improvements is sufficient foundation for a finding of special benefit.

Further, *Doolittle* does not prohibit multiple properties from being appraised in a single appraisal report. Square footage of the properties was combined in the appraisal report for what appears to be mathematical simplicity. *See* AR 58. But this only goes to show that, consistent with *Doolittle*, the appraisal report did not speculate as to a more intense use of combined parcels. Every square foot was valued at the "after" condition according to "continued use of the existing improvements" and newly available development under the assessment methodology described in Section 3.8 above. AR 57-58. Further, LID apportionment based on

square footage of property is routinely upheld. *See, e.g., City of Seattle v. Rogers Clothing for Men, Inc.*, 114 Wn.2d 213, 231-32, 787 P.2d 39 (1990); *Abbenhaus*, 89 Wn.2d at 861. The issues in *Doolittle* do not apply to this water system LID.

### 4.5 The Council's assessment decision passes "arbitrary and capricious" review because it considered all facts and circumstances presented to it.

"Arbitrary and capricious" refers to "willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action." *Abbenhaus*, 89 Wn.2d at 858. Again, appellate review before the Superior Court or the Court of Appeals centers on the record before the City Council:

> To permit expert evidence to go before the court, however, when such testimony has not been presented to the municipality, is to deny the trial court any reasonable basis for applying the arbitrary or capricious standard of review. The answer to this dilemma is, we think, to require plaintiff as a part of his burden of proof, to show that he offered before and after market value testimony to the municipality in support of his objections.

*Cammack*, 15 Wn. App. at 197.

Here, the City Council considered the matter for six weeks from October 27 to December 8, 2015. AR 3, 6. It based its assessment decision on the totality of the evidence submitted to it and, as trier of fact, determined the weight of the evidence supported the assessments.

Although not required to do so, the Council entered its findings regarding the weight of the evidence presented by the protesting property owners and concluded:

> None of the testimony taken from the owners protesting properties sufficiently persuaded the Board that the assessments failed to reflect properly the special benefits resulting from the LID No. 2011-1 improvements. Differing opinions were expressed regarding the special benefit to the protesting properties. The Board weighed that evidence, including the credibility and expertise of the witnesses. The Board concludes that the assessments are fair and ratable and the assessment roll is confirmed.

AR 9 (Conclusion 4.3). A reviewing court may not substitute its judgment for the Council's evidentiary holdings that are supported by the record, even if the court disagrees and believes the holdings "erroneous." *Abbenhaus*, 89 Wn.2d at 858-59. Under the deferential "arbitrary and capricious" standard of review, this Court should affirm.

#### 4.5.1 The City Council properly found that the evidence presented by Hamilton Corner was unpersuasive.

The only evidence Hamilton Corner submitted related to the use of LID funds. It did not present before and after valuation testimony, expert or otherwise. The LID 2011-1 water system improvements are presumed to benefit all property within the LID unless the objecting property owner can produce competent evidence to the contrary:

> Whether property is specially benefited by an improvement is generally a question of fact to be proved by expert

> testimony. *Indian Trail*, 35 Wn. App. at 842. However, it is presumed that a local improvement benefits all property within an LID unless the challenging property produces competent evidence to the contrary. *Bellevue Assoc. v. Bellevue*, 108 Wn.2d 671, 676-77, 741 P.2d 993 (1987); *Abbenhaus*, 89 Wn.2d at 860-61, 576 P.2d 888. The burden of proof shifts to the City only after the challenging party presents expert appraisal evidence showing that the property would not be benefited by the improvement. *Indian Trail*, 35 Wn. App. at 842-43.

*Hansen v. LID No. 335*, 54 Wn. App. 257, 262, 773 P.2d 436 (1989).

This case is very much like *Hansen v. Local Improvement District No. 335*. There, the Court of Appeals held the appellant's mere claim that it had sufficient private parking was insufficient to rebut the presumption of special benefit derived from a new LID-funded parking facility. *Hansen*, 54 Wn. App. at 262-63. The Court rejected appellant's argument that the presumption of benefit was "overcome by facts that speak for themselves..."

> Here, Hansen failed to present any appraisal or expert evidence at the public hearing to show that his property would not be benefited by the improvement. Instead, Hansen simply asserted that the distance between his property and the parking lot and the presence of adequate parking on his property demonstrated that his property is not "specially benefited" by the improvement. Hansen's bare assertions, without expert testimony, are simply inadequate to overcome the presumption in favor of the City.

*Hansen*, 54 Wn. App. at 263. Hamilton Corner's claims that it has sufficient water are no different than those rejected in *Hansen*.

Further, it should be noted that the City Council did not improperly impose the "fundamentally wrong basis" and "arbitrary and capricious" standards of review as burdens of proof on Hamilton Corner. *Cf. Hasit*, 179 Wn. App. at 949. Hamilton Corner simply failed to present any valuation testimony or evidence before the City Council. It therefore denied the Superior Court and this Court "any reasonable basis for applying the arbitrary or capricious standard of review." *Cammack*, 15 Wn. App. at 197. Hamilton Corner's claims should be rejected.

#### 4.5.2 The City Council properly weighed the evidence in its discretion.

Even if Hamilton Corner's submissions to the City Council are considered "valuation" evidence (they are not), its submissions go to the weight of the evidence. "Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious **even though a reviewing court may believe it to be erroneous**." *Abbenhaus*, 89 Wn.2d at 858-59 (emphasis added). This is because the Legislature recognizes balancing the credibility of opinion testimony in LID proceedings lies with the city council. RCW 35.44.100. The Supreme Court summarized the courts' limited role as follows:

> The first assignment of error in this case is based upon the facts, and depends upon on whether the assessments were too high or not. This is largely a matter of opinion. In this class of cases we said, in *In Re Seattle*, 50 Wash. 402, 97 P.

> 444: "Opinions will differ widely ... as to the benefits to accrue to the different properties within the district; but this court cannot substitute its judgment for the judgment of those whom the law has charged with the duty of establishing the district and apportioning the cost, whenever such difference of opinion may arise."

*In re City of Seattle*, 54 Wash. 297, 298, 103 P. 20 (1909) (alterations in original). This Court should reject Hamilton Corner's invitation to ignore over 100 years of precedent, as reaffirmed by the Legislature in 1957. Laws of 1957, ch. 143, § 7; *see Abbenhaus*, 89 Wn.2d at 858; Philip A. Trautman, *Assessments in Washington*, 50 WASH. L. REV. 100, 128-30 (1965) (detailing history of review standards prior to *Abbenhaus*).

Here, the City Council gave due consideration to all facts and circumstances, including the Hamilton Corner "evidence." The Council held open the October 27, 2015 special assessment hearing to November 24, 2015, for additional protest evidence, testimony and cross-examination, including from Hamilton Corner. AR 132-78. The Council deliberated on the evidence for six weeks, from October 27 to December 8, 2015. AR 3, 6. Weighting the expert appraisal report against the non-valuation testimony presented by Hamilton Corner, the Council found:

> **3.7 Hamilton Protest.** A Benefit Study/Appraisal Report was prepared for this property in accordance with standard practices. The Board heard testimony from a qualified, independent appraiser with expertise in special

> benefit assessments. The Board finds this method appropriate under the circumstances and the evidence supporting the employment of this method sufficient. The fair market value of the properties benefited by LID No. 2011-1 has been increased in an amount equal to or greater than the assessments.

AR 8. As described above, Council did not apply an incorrect standard when weighing the evidence presented at the LID hearing. AR 8-9 (Conclusions 4.2 and 4.3).

At Hamilton Corner's invitation, this Court could scrutinize the 56-page expert appraisal report on the before and after valuation of the Hamilton Corner properties. (A questionable invitation,[12] even under Hamilton Corner's inapposite case law.[13]) And, this Court *might* find after making its own fact determinations that the appraisal report leaves "room for two opinions" as to the properties' valuations. *Abbenhaus*, 89 Wn.2d at 858. Under the "arbitrary and capricious" standard, however, the Legislature directs the reviewing court to affirm the assessments even if that court believes a city council incorrectly weighed the evidence and believes the council's decision is therefore erroneous. *Abbenhaus*, 89 Wn.2d at 858-59.

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[12] In an LID appeal, "The reviewing court looks at the propriety of the process and does not undertake an independent evaluation of the merits." *Bellevue Assoc.*, 108 Wn.2d at 674.

[13] Hamilton Corner cites *Jarstad v. Tacoma Outdoor Recreation, Inc.*, 10 Wn. App. 551, 519 P.2d 278 (1974), to support its claim that the *Superior Court* should have exercised discretion to disregard the appraisal report. Hamilton Br. at 30. But under LID proceedings, the trier of fact is the *City Council*. The City Council made its credibility findings in favor of the appraisal report on the record. AR 9 (Conclusion 4.3).

Here, Hamilton Corner did not provide any competing valuation testimony, expert or otherwise, to dispute the appraisal report. Because the appraisal report is fundamentally sound,[14] the Council's consideration of the report was not arbitrary and capricious.

### 4.6 Hamilton Corner's remaining constitutional and other miscellaneous claims lack merit under LID law.

The remainder of Hamilton Corner's appeal centers on constitutional or other miscellaneous claims that lack foundation in either fact or law, or both. The Administrative Record indicates Hamilton Corner had ample opportunity (since early 2012) to seek a separate appraisal and present independent valuation testimony at the final assessment hearings before the City Council. Further, Hamilton Corner had ample opportunity to raise the collateral valuation issues that it alleges here (and now claims are constitutional), but chose not to. Due process was not denied. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 237-38, 119 P.3d 325 (2005).

#### 4.6.1 Hamilton Corner had ample opportunity to seek its own appraisal or alternative valuation testimony.

Hamilton Corner complains that the City did not timely disclose its expert appraisal report. Hamilton Corner does not, however, cite any requirement as to when the City was required to disclose the report

[14] *See supra* discussion at Sections 4.4.1, 4.4.4.

because there is none, at least until requested by the property owner. Absent any legal requirement, this argument fails. "Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P. 2d 193 (1962).

For three and a half years, Hamilton Corner had been on notice regarding the preliminary assessments. Preliminary assessments were mailed to property owners in February 2012 (AR 4), were on file at the City and available to the public (AR 94), and are reflected in the Administrative Record before the Council (AR 13). The length of time between preliminary and final assessment, often including design, bidding and construction (as here), is not unusual. *See, e.g.*, *Time Oil Co. v. City of Port Angeles*, 42 Wn. App. 473, 481, 712 P.2d 311 (1985) (affirming city council's denial of a hearing continuance where the property owner had 18 months between preliminary and final notice of assessment to prepare its case before the council).

Further, the final assessment against the Hamilton Corner properties increased by less than 12% from the preliminary assessment.

AR 13; *supra* Section 3.7.[15] The facts and circumstances surrounding the LID 2011-1 special assessments have not materially changed since 2012. *See generally* AR 11. Nothing precluded Hamilton Corner from seeking competing valuation testimony, and the City Council would have considered and weighed any competing valuation testimony presented by Hamilton Corner, had Hamilton Corner chosen to do so. It did not.

Hamilton Corner's surprising allegation that the Council misled it into believing that it could not present its own appraisal at the November 24, 2015, hearing is false. At the first October 27 assessment hearing, Jon Hinton suggested with specificity to the Hamilton Corner properties:

> … Mr. Hamilton, I would recommend that maybe what you should possibly look at doing is talking to an appraiser and having them—once we provide them with additional information that you requested in your letter, have them determine whether they feel there's benefit after the improvements to your property….

AR 155-56. As in *Hansen*, discussed above, this Court should reject Hamilton Corner's vague and misleading due process claims:

> Rather, the record shows that the Council heard all the objections presented to it before making its final decision to adopt the proposed LID. Thus, Hansen has not established that the City violated his due process rights.

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[15] An assessment is not invalidated by the fact that it exceeds the estimate, and the fact that the final assessment exceeded the estimate is not at issue in this proceeding. The estimate merely assists a city in determining whether to proceed with an LID. *Vincent v. City of South Bend*, 83 Wn. 314, 317, 145 P. 452 (1915); *and see, e.g., City of Chehalis v. Cory*, 54 Wn. 190, 196, 102 P. 1027 (1909) (LID assessment more than doubled from estimate).

*Hansen*, 54 Wn. App. at 264.

#### 4.6.2 LID 2011-1 does nothing to Hamilton Corner's "paper" water rights or existing private water system.

Without any corroborating evidence or legal authority, Hamilton Corner asserts that a public water system will cause it to lose water rights and will diminish the value of its property. This claim lacks any merit.

First, water rights have value independent of drinking water systems, as there is a market value for water rights, which may be transferred. Second, the uncontested evidence is that Hamilton Corner's "paper" water rights have not been documented as having been perfected (put to beneficial use) and available at the amounts it claims. Third, Hamilton Corner's private water system requires chlorination that the City's public water system has avoided. Fourth, Hamilton Corner's water rights are insufficient to provide fire flows to support greater commercial development of the properties (the highest and best use of this land at this I-5 interchange).

Simply put, the LID 2011-1 Improvements deliver municipal water to the Rush Road properties. They do nothing to the Hamilton Corner water system.

### 4.6.3 Hamilton Corner's unsupported attacks against the City's development and water utility regulations should be rejected.

The question of whether or not exceptions to the City's development and water utility regulations under the City's Municipal Code apply for valuation purposes to the Hamilton Corner properties should have been brought before the City Council at the assessment hearing by Hamilton Corner. It did not do so. To the extent Hamilton Corner raises collateral challenges to City regulations for the first time on appeal here, *see, e.g.*, Hamilton Br. at 12 n.6, this Court should reject them:

> All objections to the confirmation of the assessment roll shall state clearly the grounds of objections. Objections not made within the time and in the manner prescribed in this chapter shall be conclusively presumed to have been waived.

RCW 35.44.110; *Tiffany Family Trust*, 155 Wn.2d at 237-38.

Further, even if properly raised, consideration of the City's development and water utility code served as a proper basis in considering special benefit in the expert appraisal report. After, or "with improvement," valuations should take into consideration local regulations that establish the properties' legal uses available after the LID improvement. *Hasit*, 179 Wn. App. at 942 ("The zoning changes directly

influenced the value of the properties with sewer, and the appraiser properly considered them for that purpose.").

Finally, to the extent Hamilton Corner attacks the constitutionality of the Napavine Municipal Code, it cites no legal authority. *See, e.g.*, Hamilton Br. at 12 n.6, 36. As such, these arguments should be rejected: "[N]aked castings into the constitutional seas are not sufficient to command judicial consideration and discussion." *Pub. Hosp. Dist. No. 1 of King Cty. v. Univ. of Washington*, 182 Wn. App. 34, 49, 327 P.3d 1281 (2014) (alteration in original; internal quotation marks omitted).

## 5. CONCLUSION

Hamilton Corner does not satisfy the strict statutory standards for this appeal. It has failed to establish that the assessments are founded on a fundamentally wrong basis or identify any Council acts that are arbitrary and capricious. For the foregoing reasons, this Court, like the Superior Court sitting in its appellate capacity, should reject Hamilton Corner's arguments, dismiss this appeal with prejudice, deny the Hamilton Corner's requested relief, and grant reasonable costs and expenses to the City pursuant to Title 14 RAP.

RESPECTFULLY SUBMITTED this 12th day of December, 2016.

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and

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

| | |
|---|---|
| HAMILTON CORNER I, LLC,<br><br>Appellant,<br>v.<br><br>CITY OF NAPAVINE,<br><br>Respondent. | No. 49507-4-II<br><br>Lewis County Superior Court<br>Case No. 15-2-01259-21<br><br>CERTIFICATE OF SERVICE |

I, Susan G. Bannier, certify that I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of eighteen and I am competent to be a witness herein.

On December 12, 2016, I caused a true and correct copy of the following documents:

1. Brief of Respondent City of Napavine; and
2. this Certificate of Service

to be served via email and U.S. Mail, postage prepaid, upon designated counsel as follows:

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***Attorneys for Appellant***

- ☒ Via U.S. Mail
- ☐ Via Facsimile
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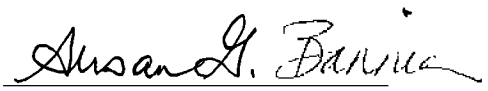
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 12th day of December, 2016 at Seattle, Washington.



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